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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1987

STATE OF DELAWARE,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT, AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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February 9, 1988

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STATE OF DELAWARE,

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v.

STATE OF NEW YORK,

Defendant.

———o———

MOTION FOR LEAVE TO FILE COMPLAINT

———o———

The State of Delaware, by its counsel, hereby moves the Court for leave to file the attached Complaint against the State of New York.

Respectfully submitted,

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Attorney General of Delaware

FRED S. SILVERMAN
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The State of Delaware

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STATE OF DELAWARE,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

COMPLAINT

The State of Delaware, plaintiff, by its counsel, brings this original action against the State of New York, defendant, and alleges as follows:

I.

1. The plaintiff, the State of Delaware ("Delaware"), and the defendant, the State of New York ("New York"), are states of The United States.

2. This is a controversy between two states of The United States and is, therefore, within the original jurisdiction of the Supreme Court of The United States, under Article III, Section 2 of the Constitution of The United States, and under the United States Code, Title 28, Section 1251(a).

3. This controversy concerns the wrongful escheating or threat to escheat by New York, from corporations

incorporated under the laws of Delaware engaged in the securities brokerage business (the "Delaware Brokerage Corporations"), of monies and other intangible property. The Delaware Brokerage Corporations had or have such property as the result of distributions made with respect to securities held or formerly held for the account of customers but as to which the brokers have no identification or last known address of anyone claiming to be the beneficial owner of such property (the "Escheatable Property of Unknowns").

4. Delaware claims herein that, under *Texas v. New Jersey*, 379 U.S. 674 (1965), and *Pennsylvania v. New York*, 407 U.S. 206 (1972), the Escheatable Property of Unknowns is properly escheatable not to New York but to Delaware, pursuant to its Escheat Law. Del. Code Ann. tit. 12, §§ 1197-1211 (1987) (the "Delaware Escheat Law"). Delaware seeks herein (a) a judgment that New York pay to Delaware the Escheatable Property of Unknowns taken by New York and (b) a prospective declaration that Delaware has the right in the future to escheat the Escheatable Property of Unknowns from the Delaware Brokerage Corporations without further interference or competing claims from New York.

5. No other state has been joined as a defendant in this action because Delaware is not aware of any state which is asserting a right which may be contrary to the claim being asserted herein by Delaware. However, Delaware has, upon the filing of the Motion for Leave to File Complaint, mailed a copy of the Motion, the Complaint and the Brief in Support of Motion for Leave to File Complaint, to each of the other states, in order that any other state which might believe it has some claim to the Escheat-

able Property of Unknowns may seek leave of this Court to intervene in these proceedings.

6. None of the Delaware Brokerage Corporations which had or have Escheatable Property of Unknowns has been joined as a defendant in this action, because such entities (a) have no claim as to the Escheatable Property of Unknowns and (b) are held harmless by New York from any competing claims to the Escheatable Property of Unknowns taken by New York. (N.Y. Abandoned Property Law § 1404 (McKinney Supp. 1988)).

II.

7. The Delaware Brokerage Corporations include the following (and their predecessors):

Bear, Stearns & Co. Inc.

Dean Witter Reynolds Inc.

Donaldson, Lufkin & Jenrette Securities Corporation

Drexel Burnham Lambert Incorporated

The First Boston Corporation

Kidder, Peabody & Co. Incorporated

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Morgan Stanley & Co. Incorporated

Oppenheimer & Co., Inc.

PaineWebber Incorporated

Prudential-Bache Securities Inc.

Salomon Brothers Inc.

Shearson Lehman Hutton Inc.

Smith Barney, Harris Upham & Co. Incorporated

Thomson McKinnon Securities Inc.

Each of the Delaware Brokerage Corporations has offices and conducts business in New York, as well as in other states of The United States.

8. The Delaware Brokerage Corporations, in the course of their business, act as record owners of securities, primarily stocks and bonds, the beneficial ownership of which is in the account of customers of the Delaware Brokerage Corporations. As record owners, the Delaware Brokerage Corporations from time to time receive distributions with respect to the securities, such as dividends and interest (the "Payments"). As the Payments are received, the Delaware Brokerage Corporations regularly allocate to the accounts of their customers the Payments to which they are beneficially entitled.

9. In certain instances, however, the Delaware Brokerage Corporations are unable to identify the beneficial owners of the Payments. For example, a Delaware Brokerage Corporation may sell in the open market a customer's securities and the ultimate acquiror in the market of those securities thereafter may fail to remove that Delaware Brokerage Corporation as the record owner of such securities before the record date on which a Payment becomes payable to that Delaware Brokerage Corporation. Unless a claim to pay over such Payment is made by the ultimate acquiror of such securities, that Delaware Brokerage Corporation will not know who the beneficial owner of such Payment is or what the address is for such beneficial owner. Accordingly, where no claim to pay over the Payments is made, the Delaware Brokerage Corporation has Escheatable Property of Unknowns.

III.

10. Since at least July 13, 1971, Delaware has provided, by the Delaware Escheat Law, for the escheat of personal property of every kind or description, including the Escheatable Property of Unknowns, held by every legal entity incorporated under Delaware law, including the Delaware Brokerage Corporations, having possession, custody or control of such property, where such property has remained unclaimed by its beneficial owner for a period of seven years. Delaware Escheat Law § 1198(6), (8) and (10). The Delaware Escheat Law is set forth in Exhibit "A", attached to the Brief in Support of Motion for Leave to File Complaint, attached hereto.

IV.

11. Notwithstanding the Delaware Escheat Law, and Delaware's right thereunder to escheat the Escheatable Property of Unknowns in the hands of Delaware Brokerage Corporations, New York has continued to claim and to seize such property, which rightfully belongs to Delaware.

12. Effective April 1, 1952, the State of New York adopted a provision entitled "Unclaimed Property Held by Brokers." Article V-A of the New York Abandoned Property Law §§ 510-514 (McKinney Supp. 1988) (the "New York Escheat Law"). The New York Escheat Law provides for the escheat of personal property, including the Escheatable Property of Unknowns, held by any corporation engaging in New York in the purchase, sale or exchange of securities for or on behalf of any customers. Unlike the Delaware Escheat Law, which

requires property to be abandoned for seven years before its escheat, the New York Escheat Law provided for escheat after five years until December 31, 1975, when the dormancy period was further reduced to three years. *See generally id.* §§ 510(4) and (5), 511, as amended by 1973 N.Y. Laws c.617, § 6. The New York Escheat Law is set forth in Exhibit "B", attached to the Brief in Support of Motion for Leave to File Complaint, attached hereto.

13. New York publishes and disseminates to securities brokers, including the Delaware Brokerage Corporations, a publication entitled "Abandoned Property Law Handbook for Brokers and Dealers" ("Handbook"), which states that it was "published to inform brokers and dealers in securities concerning their responsibilities under Article V-A." Relevant excerpts from the Handbook are set forth in Exhibit "C", attached to the Brief in Support of Motion for Leave to File Complaint, attached hereto.

14. The Handbook sets forth the statutory language of Article V-A, and makes clear New York's position that the escheat to it of abandoned property includes Payments where they are attributable to beneficial owners who "cannot be identified," *See, e.g.*, Exhibit "C" at p. 71, ¶ 1 ("The unpaid amounts in category (a) [of Section 511.1] often occur when the broker or dealer ceases to hold the security at the time of receipt of the dividend or bond interest, the security having already been traded, and *the persons or customers entitled to such payment cannot be identified (unknown).*"—emphasis supplied); *id.*, ¶ 2 ("The unpaid amounts in category (a) [of Section 511.1-a] often occur when the broker or dealer receives

dividend or bond interest other than from a dividend disbursing agent, but rather from another broker or dealer as a result of an overpayment, and *the persons or customers entitled to such payment cannot be identified (unknown).*" —emphasis supplied); and p. 73, ¶ 4 ("*This class of unclaimed property* [*covered by Section 511.3*] *generally results from an inability to identify the owner of the security,* to locate the owner of a dormant customer account or to have a customer accept delivery of his securities or amounts paid thereon to which he is entitled. The unknown owner situation often occurs as discussed in subparagraph 1 above when a stock dividend is received by the broker or dealer after the underlying security had already been traded and delivered."—emphasis supplied)

15. The Handbook further provides that Payments received by a broker in New York, including the Delaware Brokerage Corporations, are escheatable to New York even when not attributable to the account of a New York customer:

> [I]tems received as the holder of record of a security which a broker or dealer ceased to actually hold prior to receipt of the item, are deemed abandoned property (if unpaid to the entitled customer for three years) if received in this state, without regard to the location of the office in which the original transaction in respect to the security may have occurred. (Sec. 510, Subd. 6, par. b and Sec. 511, Subd. 1)

Id., p. 75, ¶ 6.

V.

16. From before 1971 up to the present time, New York has demanded from the Delaware Brokerage Corporations all of the Escheatable Property of Unknowns after the running of the three or five year dormancy period pro-

vided for under the New York Escheat Law. Most of the Delaware Brokerage Corporations have acceded to New York's demands to pay over the Escheatable Property of Unknowns and, accordingly, Delaware, after the running of its seven year dormancy period, has been refused payment of the Escheatable Property of Unknowns on the basis that such property has already been paid over to New York, and in reliance on a representation contained in the General Provisions of the New York Escheat Law that New York will hold harmless any entity in respect of subsequent claims made on property escheated to New York. New York Escheat Law § 1404 (McKinney Supp. 1988) (attached to the Brief in Support of Motion for Leave to File Complaint as part of Exhibit "B" thereto).

17. Plaintiff is aware of only three of the Delaware Brokerage Corporations which to date have challenged New York's claim to the Escheatable Property of Unknowns.

18. In the early 1980's, PaineWebber Incorporated ("PaineWebber"), a Delaware Brokerage Corporation, informed New York that it would no longer include the Escheatable Property of Unknowns in the property paid over to New York, and informed New York that if the Escheatable Property of Unknowns was escheatable, it was escheatable only to Delaware, as the state of its incorporation, pursuant to Delaware's Escheat Law. Shortly thereafter, New York commenced an administrative proceeding, seeking the recovery of the Escheatable Property of Unknowns. That administrative proceeding still pends.

19. Another Delaware Brokerage Corporation, Smith Barney, Harris Upham & Co. Incorporated ("Smith

Barney"), has also recently determined not to escheat to New York any Escheatable Property of Unknowns on the ground that such property could properly be escheated only by Delaware under the Delaware Escheat Law. Smith Barney communicated that decision to the New York abandoned property authorities. In response, New York has made a demand upon Smith Barney to report and to pay such property to it and has stated that, absent compliance with such demand, New York intends to commence an administrative proceeding against Smith Barney to recover such property.

20. Another Delaware Brokerage Corporation, Kidder, Peabody & Co. Incorporated ("Kidder Peabody"), declined in 1987 to escheat to New York Escheatable Property of Unknowns for the year 1983, on the ground that such property can properly be escheated only by Delaware under the Delaware Escheat Law. New York has informed Kidder Peabody that it will make a demand for payment of such property to it and that, absent compliance with such demand, New York intends to commence an administrative proceeding against Kidder Peabody to recover such property.

VI.

21. The amount of Escheatable Property of Unknowns wrongfully demanded by New York from the Delaware Brokerage Corporations has been substantial. For example, in the years 1981 to 1984 alone, Dean Witter Reynolds Inc. ("Dean Witter"), one of the Delaware Brokerage Corporations, reported and paid over to New York the following Escheatable Property of Unknowns:

Year	*Amount*
1981	$ 284,005
1982	274,089
1983	967,925
1984	995,532
	$2,521,551

Plaintiff is informed that the amounts of Escheatable Property of Unknowns paid over by Dean Witter to New York in those years were not atypical. For example, Smith Barney paid New York more than one million dollars in Escheatable Property of Unknowns in each of the years 1985 and 1986. Merrill Lynch, Pierce, Fenner & Smith Incorporated, another Delaware Brokerage Corporation, paid New York more than two million dollars in Escheatable Property of Unknowns in 1982. Accordingly, plaintiff believes that, since July 13, 1971, New York has taken many millions of dollars in Escheatable Property of Unknowns which rightfully belongs to Delaware. The resolution of New York's competing claim thus is of substantial monetary importance to Delaware.

VII.

22. By reason of New York's past and continuing claims to the Escheatable Property of Unknowns, there is a controversy between Delaware and New York as to which of the two states may properly escheat such property.

23. The previous taking by New York of Escheatable Property of Unknowns from the Delaware Brokerage Corporations, and its continuing demand to take such property in the future, are contrary to this Court's de-

cisions in *Texas v. New Jersey, supra,* and *Pennsylvania v. New York, supra,* that abandoned property attributable to a beneficial owner for whom the holder has no name or address record is escheatable only pursuant to the laws of the holder's state of incorporation.

24. Under the rule of *Texas v. New Jersey* and *Pennsylvania v. New York,* Delaware is entitled, as the state of incorporation of the Delaware Brokerage Corporations, to recover from New York all such property which has heretofore been paid over or transferred to New York by them.

25. Delaware cannot be protected from irreparable injury and loss of property unless this Court grants the relief sought by this Complaint.

26. Delaware has no adequate remedy at law.

WHEREFORE, the plaintiff prays:

1. That this Court take jurisdiction of the parties and subject matter herein;

2. That this Court hear and determine the controversy herein in such manner as the Court deems appropriate;

3. That a temporary injunction be issued restraining the defendant, New York, from proceeding with any action now pending, or from instituting any action hereafter, to escheat and/or take custody of any portion of the Escheatable Property of Unknowns held by the Delaware Brokerage Corporations;

4. That judgment be entered that the Escheatable Property of Unknowns, held by the Delaware Brokerage Corporations, is subject only to the escheat of Delaware, under the Delaware Escheat Law;

5. That the defendant, New York, be directed to pay or deliver to plaintiff, Delaware, all the Escheatable Property of Unknowns paid or delivered to New York by the Delaware Brokerage Corporations, which has been abandoned for a period of seven years or more and which hereafter becomes abandoned under the Delaware Escheat Law; and

6. That the plaintiff, Delaware, have such other and further relief as this Court may deem just.

Respectfully submitted,

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STATE OF DELAWARE,

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BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

———o———

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QUESTIONS PRESENTED

I. Does the Complaint present a justiciable controversy between States calling for the exercise of the Court's original and exclusive jurisdiction?

II. Should this Court take jurisdiction of this case in order to prevent New York from unjustly depriving Delaware of its entitlement, under *Texas v. New Jersey*, 379 U.S. 674 (1965), and *Pennsylvania v. New York*, 407 U.S. 206 (1972), to escheat monies and other intangible property held by securities brokers incorporated under the laws of Delaware for beneficial owners who cannot be identified?

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JURISDICTION

The original jurisdiction of the Court is invoked under Article III, Section 2 of the Constitution of the United States, and under United States Code, Title 28, Section 1251(a).

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STATEMENT OF THE CASE

The State of Delaware ("Delaware") seeks recovery of certain monies and other intangible property wrongfully escheated by the State of New York ("New York"), along with a prospective declaration establishing Delaware's exclusive right to escheat similar property. Delaware bases its claim on this Court's decisions in *Texas v. New Jersey*, 379 U.S. 674 (1965), and *Pennsylvania v. New York*, 407 U.S. 206 (1972).

The Complaint, which Delaware seeks leave to file, recites the following facts:

The intangible personal property at issue was or is held by certain corporations incorporated under the laws of Delaware engaged in the securities brokerage business ("Delaware Brokerage Corporations"). Each of the Delaware Brokerage Corporations has offices and conducts business in New York, as well as in other states of the United States.[1] The Delaware Brokerage Corporations had or have such property as the result of distributions made with respect to securities held or formerly held for the account of customers but as to which the brokers have no identification or last known address of anyone

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[1] Certain of the Delaware Brokerage Corporations are listed in paragraph 7 of the Complaint.

claiming to be the beneficial owners (the "Escheatable Property of Unknowns").

The Delaware Brokerage Corporations, in the course of their business, act as record owners of securities, primarily stocks and bonds, the beneficial ownership of which is for the account of customers of the Delaware Brokerage Corporations. As record owners, the Delaware Brokerage Corporations from time to time receive distributions with respect to the securities, including dividends and interest (the "Payments"). As the Payments are received, the Delaware Brokerage Corporations allocate to the accounts of their customers the Payments to which they are beneficially entitled.

In certain instances, however, the Delaware Brokerage Corporations are unable to identify the beneficial owners of the Payments. For example, a Delaware Brokerage Corporation may sell in the open market a customer's securities and the ultimate acquiror in the market of those securities thereafter may fail to remove the Delaware Brokerage Corporation as the record owner of such securities before the record date on which a Payment becomes payable to that Delaware Brokerage Corporation. Unless a claim to pay over such Payment is made by the ultimate acquiror of such securities, that Delaware Brokerage Corporation will not know who the beneficial owner of such Payment is or what the address is for such beneficial owner. Accordingly, where no claim to pay over the Payments is made, the Delaware Brokerage Corporation has Escheatable Property of Unknowns.

Since at least 1971, both Delaware and New York have claimed the right, under their respective laws, to escheat

the Escheatable Property of Unknowns held by the Delaware Brokerage Corporations. *See generally* Del. Code Ann. tit. 12, §§ 1197-1211 (1987) ("Delaware Escheat Law"), and New York Abandoned Property Law §§ 510-514 (McKinney Supp. 1988) ("New York Escheat Law"), attached hereto as Exhibits "A" and "B", respectively. Unlike the Delaware Escheat Law, which requires property to be abandoned for seven years before its escheat, New York law provides for escheat after three years. Delaware Escheat Law § 1198(8); New York Escheat Law § 511.[2]

From at least 1971, New York has demanded from the Delaware Brokerage Corporations all of the Escheatable Property of Unknowns at issue here, after the running of the three or five year dormancy period provided for under the New York Escheat Law. Moreover, New York has published and disseminated to securities brokers and dealers, including the Delaware Brokerage Corporations, a publication entitled "Abandoned Property Law Handbook for Brokers and Dealers" ("Handbook"), which makes clear New York's position that it is entitled to escheat the Escheatable Property of Unknowns. *See generally* relevant excerpts of the Handbook attached hereto as Exhibit "C".

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[2] Section 511 of the New York Escheat Law was amended in 1973 to shorten the required dormancy period prior to escheat from five to three years, effective December 31, 1975. 1973 N.Y. Laws c.617 § 6. New York's shorter waiting period does not give it the right to Escheatable Property of Unknowns because, under *Texas v. New Jersey* and *Pennsylvania v. New York*, the state of the holder's incorporation—here Delaware—has the superior right to escheat.

Most of the Delaware Brokerage Corporations have acceded to New York's demands to pay over the Escheatable Property of Unknowns and, accordingly, Delaware, after the running of its seven year dormancy period, has been refused payment of the Escheatable Property of Unknowns on the basis that such property has already been paid over to New York, and in reliance on a representation contained in the General Provisions of the New York Escheat Law that New York will hold harmless any entity in respect of competing claims made on property taken by New York. New York Escheat Law § 1404 (attached hereto as part of Exhibit "B"). Plaintiff is aware of only three of the Delaware Brokerage Corporations which to date have challenged New York's claim to the Escheatable Property of Unknowns.

In the early 1980's, PaineWebber Incorporated ("PaineWebber"), a Delaware Brokerage Corporation, informed New York that it would no longer include the Escheatable Property of Unknowns in the property paid over to New York, and that if such property was escheatable, only Delaware, the state of its incorporation, had a claim to it.[3] Shortly thereafter, New York commenced an administrative proceeding, seeking the recovery of the Escheatable Property of Unknowns. That administrative proceeding still pends.

Another Delaware Brokerage Corporation, Smith Barney, Harris Upham & Co. Incorporated ("Smith Bar-

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[3] We understand that PaineWebber may contend that the Escheatable Property of Unknowns is not abandoned property and thus not escheatable at all. Delaware does not herein seek any determination of that issue.

ney"), has also recently determined not to escheat to New York any Escheatable Property of Unknowns on the ground that such property can properly be escheated only by Delaware under the Delaware Escheat Law. Smith Barney communicated that decision to the New York abandoned property authorities. In response, New York has made a demand upon Smith Barney to report and to pay such property to it, and has stated that, absent compliance with such demand, New York intends to commence an administrative proceeding against Smith Barney to recover such property.

Another Delaware Brokerage Corporation, Kidder, Peabody & Co. Incorporated ("Kidder Peabody"), declined in 1987 to escheat to New York Escheatable Property of Unknowns for the year 1983, on the ground that such property can properly be escheated only by Delaware under the Delaware Escheat Law. New York has informed Kidder Peabody that it will make a demand for payment of such property to it and that, absent compliance with such demand, New York intends to commence an administrative proceeding against Kidder Peabody to recover such property.

The amount of Escheatable Property of Unknowns wrongfully demanded by New York from the Delaware Brokerage Corporations has been substantial. For example, in the years 1981 to 1984, Dean Witter Reynolds Inc. ("Dean Witter"), one of the Delaware Brokerage Corporations, itself reported and paid over to New York the following Escheatable Property of Unknowns:

Year	Amount
1981	$ 284,005
1982	274,089
1983	967,925
1984	995,532
	$2,521,551

Plaintiff is informed that the amounts of Escheatable Property of Unknowns paid over by Dean Witter to New York in those years were not atypical and, accordingly, plaintiff believes that since July 13, 1971 New York has taken many millions of dollars in Escheatable Property of Unknowns which rightfully belong to Delaware.[4] The resolution of New York's competing claim is of substantial monetary importance to Delaware.

—o—

SUMMARY OF ARGUMENT

I. Both New York and Delaware claim the right to escheat the same intangible property held or formerly held by Delaware Brokerage Corporations for which the beneficial owners cannot be identified. The resolution of these conflicting claims between two States is a justiciable controversy within the original and exclusive jurisdiction of this Court under Article III, Section 2 of the Constitution of the United States, and Title 28, Section 1251(a) of the United States Code.

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[4] For example, Smith Barney paid New York more than one million dollars in Escheatable Property of Unknowns in each of the years 1985 and 1986. Merrill Lynch, Pierce, Fenner & Smith Incorporated, another Delaware Brokerage Corporation, paid New York more than two million dollars in Escheatable Property of Unknowns in 1982.

II. In *Texas v. New Jersey*, the Court established rules for the determination of the priority of the right of escheat between States claiming the same abandoned intangible property. Those rules were established because they provided an efficient, easily administered, and fair method of determining potentially conflicting escheat claims. One such rule there established was that where the holder of the abandoned property had no address record for the beneficial owner, the state of the holder's incorporation had the right to escheat the property. At the urging of New York, that rule was reaffirmed in *Pennsylvania v. New York* in circumstances where the rule entitled the state of incorporation to significant amounts of intangible property. Under that efficacious rule, Delaware, not New York, is entitled to escheat the intangible personal property at issue here.

———o———

ARGUMENT

I. THE COMPLAINT PRESENTS A JUSTICIABLE CONTROVERSY WARRANTING THE EXERCISE OF THIS COURT'S ORIGINAL AND EXCLUSIVE JURISDICTION.

The Complaint alleges that Delaware has the right, under the Delaware Escheat Law, to escheat the Escheatable Property of Unknowns held or formerly held by Delaware Brokerage Corporations. New York not only claims the right to the same property under its Escheat Law, but in fact has escheated many millions of dollars of Escheatable Property of Unknowns formerly held by Delaware Brokerage Corporations. The Due Process Clause of the Fourteenth Amendment prevents more than one State from escheating the same property. *Western Union Telegraph*

Co. v. Pennsylvania, 368 U.S. 71 (1961). There is, therefore, a justiciable controversy between Delaware and New York within the meaning of Article III, Section 2, of the Constitution of the United States and Title 28, Section 1251(a) of the United States Code.

In *Western Union Telegraph Co. v. Pennsylvania, supra,* this Court reversed a judgment of escheat obtained by Pennsylvania in its own courts, because New York made a claim to the same intangible property. This Court declared that it would be the appropriate forum for such a controversy:

> Our Constitution has wisely provided a way in which controversies between states can be settled without subjecting individuals and companies affected by those controversies to a deprivation of their right to due process of law. . . .
>
> . . . .
>
> The rival state claimants here, as in Texas v. Florida, [306 U.S. 398 (1939)], can invoke our original jurisdiction.

Id. at 77. This Court went on to hold:

> The rapidly multiplying state escheat laws, originally applying only to land and other tangible things but recently moving into the elusive and wide-ranging field of intangible transactions have presented problems of great importance to the states and persons whose rights will be adversely affected by escheats. This makes it imperative that controversies between different states over their right to escheat intangibles be settled in a forum where all the states that want to do so can present their claims for consideration and final, authoritative determination. Our Court has jurisdiction to do that.

Id. at 79 (footnote omitted).

Thereafter, in *Texas v. New Jersey, supra,* and *Pennsylvania v. New York, supra,* this Court's original jurisdiction was invoked to resolve disputes between states concerning conflicting claims to escheat intangible property. This case involves the same kind of controversy, and this Court has original and exclusive jurisdiction over it.

II. THIS COURT SHOULD TAKE JURISDICTION OF THIS DISPUTE IN ORDER TO PREVENT NEW YORK FROM DEPRIVING DELAWARE OF ITS RIGHTS AS ESTABLISHED BY THIS COURT IN TEXAS V. NEW JERSEY AND PENNSYLVANIA V. NEW YORK.

This Court should take jurisdiction of this dispute because New York, to Delaware's detriment, is failing to follow the clear precedent of *Texas v. New Jersey,* 379 U.S. 674 (1965), and *Pennsylvania v. New York,* 407 U.S. 206 (1972), which resolved the rights of the various states to escheat intangible property under the circumstances present here.

In *Texas v. New Jersey,* four states claimed the right to escheat intangible obligations owed by Sun Oil Company to 1,730 creditors, including amounts for which the holder's records did not reveal an address for the owner of the funds at issue. *Id.* at 675, n.4. This Court, seeking "a clear rule which will govern all types of intangible obligations like these and to which all States may refer with confidence" (*id.* at 678), held that, where ascertainable, the state of the last known address of the owner had the right to escheat. Where no such address was available, however, or where the state of the last known address had no applicable escheat law, this Court held that the state of the holder's incorporation had the right to escheat

the property (subject to any subsequent, superior claim by the state of the last known address). *Id.* at 682. The rule adopted was found to be "the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States." *Id.* at 683.

In *Pennsylvania v. New York*, New York successfully urged this Court to reaffirm the rule of *Texas v. New Jersey*, in a dispute concerning competing escheat claims with respect to money orders and drafts which had been neither paid nor refunded. New York sought to escheat such funds as the state of incorporation of Western Union when the company had no address for the owners of the funds. Pennsylvania sought to distinguish *Texas v. New Jersey* because of the high percentage of owners who were unknown or for whom no address was available. New York, however, took the position that the rule of *Texas v. New Jersey* should apply to "all types of abandoned intangible obligations" without "exceptions." Specifically, New York contended that the rule applied to such things as shareholder dividends where there was no known address for the owner (N.Y. Br. 4, 10-11, 15—footnote omitted):

New York's Position

> The rule announced in *Texas v. New Jersey*, 379 U.S. 674 (1965) was intended to apply to all types of abandoned intangible obligations. The very essence of the holding was that each abandoned property case should not have to be decided on the basis of its particular facts. Each case should not require the Court to, "devise new rules of law to apply to ever-developing new categories of facts," 379 U.S. at 679. . . .
>
> . . . .
>
> What is clear is that the Court was fully aware that with respect to portions of four of the eight categories of "debts" involved in *Texas* there were

> creditors "some of whom had no last known address indicated", 379 U.S. at 675-76, fn. 4. With this fact in mind, the Court laid down a rule applicable to "all" abandoned intangible obligations, making specific provision for those obligations where the creditor's last address was unknown . . . .
>
> In this regard, it should be noted that *Texas v. New Jersey* involved a wide variety of intangibles such as . . . shareholder dividends . . . .
>
> . . . .
>
> In summary, the eroding exceptions proposed to the rule adopted by this Court "with a unique tone of finality" in *Texas v. New Jersey*, should be rejected.

This Court agreed with New York's position, holding that:

> [T]o vary the application of the Texas rule according to the adequacy of the debtor's records [i.e., the percentage of unknown addresses] would require this Court to do precisely what we said should be avoided —that is, "to decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever-developing new categories of facts."

407 U.S. at 215, citing *Texas, supra*, 379 U.S. at 679.

Notwithstanding its position as the proponent of the rule in *Pennsylvania v. New York*, New York is frustrating the application of this "fair[ ], . . . easy to apply, and . . . most generally acceptable" rule by claiming that it is entitled to escheat the Escheatable Property of Unknowns held by Delaware Brokerage Corporations. This Court should take jurisdiction over this important controversy and permit Delaware to file its Complaint so that New York cannot selectively embrace the rulings of this Court in accordance with its interest of the moment, to the substantial damage of a sister state.

———o———

CONCLUSION

This Court has original and exclusive jurisdiction of this dispute between Delaware and New York. The Motion For Leave To File Complaint should be granted. The dispute should be resolved according to this Court's precedents which establish that Delaware is entitled to escheat the property at issue. Further, New York should be directed to pay to Delaware amounts already paid to it to which Delaware is or will be entitled under the Delaware Escheat Law, and to cease interfering with Delaware's right to escheat the Escheatable Property of Unknowns held by the Delaware Brokerage Corporations.

Respectfully submitted,

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EXHIBIT A

DELAWARE ESCHEAT LAW

Subchapter IV. Other Unclaimed Property

§ 1197. Other property escheated.

Except as otherwise provided elsewhere in the Delaware Code all property, as hereinafter defined and not otherwise subject to escheat in accordance with this chapter, the title to which has failed and the power of alienation suspended by reason of: (1) The death of the owner thereof, intestate, leaving no known heirs-at-law; (2) the owner thereof having disappeared or being missing from his last known place of residence for a continuous period of 7 years or more, leaving no known heirs-at-law; or (3) the same having been abandoned by the owner thereof, as hereinafter defined, shall descend to the State as an escheat in accordance with the Constitution, the general laws of this State or this subchapter. (12 Del. C. 1953, § 1197; 58 Del. Laws, c. 275, § 1; 63 Del. Laws, c. 299, § 1)

§ 1198. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(1) "Abandoned property" means property against which a full period of dormancy has run.

(2) "Appropriation" means the act of the State, through its duly constituted officers or agencies, in taking or accepting possession or custody of abandoned, unprotected, unclaimed or lost property as conservator thereof for later disposition by descent to the State as an escheat or redemption by the owner as provided in this subchapter.

(3) "Escheat" means the descent or devolution of property to the State under and by virtue of the Constitution of the State, the general laws of this State or this subchapter.

(4) "Escheatable property" means property which is subject to escheat to the State under and by virtue of the Constitution of the State, the general laws of this State or this subchapter.

(5) "Escheated property" means property which has descended to the State as an escheat.

(6) "Holder" means any person having possession, custody or control of the property of another person and includes a credit union, a post office, a depository, a bailee, a trustee, a receiver or other liquidating officer, a fiduciary, a governmental department, institution or agency, a municipal corporation and the fiscal officers thereof, a public utility, service corporation and every other legal entity incorporated or created under the laws of this State or doing business in this State. For purposes of this subchapter, the issuer of any intangible ownership interest in a corporation, whether or not represented by a stock certificate, which is registered on stock transfer or other like books of the issuer or its agent, shall be deemed a holder of such property. This definition shall be construed as distinguishing the term "holder" of property from the term "owner" of property as hereinbefore defined and as excluding from the term "holder" any person holding or possessing property by virtue of title or ownership.

(7) "Owner," in addition to its commonly accepted meaning, shall be construed to particularly mean and include any person, as hereinbefore defined, having the legal or equitable title to property coming within the purview of this subchapter.

(8) "Period of dormancy" means the full and continuous period of 7 years, except a period of 15 years for traveler's checks, during which an owner has ceased, failed or neglected to exercise dominion or control over his property or to assert a right of ownership or possession or to make presentment and demand for payment and satisfaction or to do any other act in

relation to or concerning such property, providing that with respect to an intangible ownership interest in a corporation, whether or not represented by a stock certificate, the period of dormancy means a period of 7 years during which: (1) The owner has not claimed a dividend, distribution or other sum with respect to such interest; (2) the owner has not communicated in writing with the holder concerning such property or otherwise communicated with the holder concerning such property which communication is evidenced by a writing or other record prepared by the holder or its employee in the ordinary course of business; and (3) at the end of which the holder does not know the current location of the owner of such property. A full period of dormancy shall be deemed to have run with respect to any dividends or other distributions held for or owing to an owner at the time a period of dormancy shall have run with respect to the intangible ownership interest in a corporation to which such dividend or other distribution attaches. The term does not apply to a period of time during which the owner has failed or neglected to make a demand or file a claim within the time prescribed in an order or decree of court or in a legal notice served and published pursuant to law or an order of court and the period of dormancy shall not commence to run with respect to claims, demands or other property held by a holder pursuant to a written agreement which contemplates that there shall be a period of inactivity, until the expiration of the contemplated period of inactivity. This definition shall be construed as excluding any act or doing of a holder of abandoned property not done at the express request or authorization of the owner.

(9) "Person" includes a natural person, a corporation organized or created under the laws of this State or a corporation doing business or which has been engaged in business in this State, a copartnership, a voluntary association and every or any other association or organization of individuals, but excludes banking organizations and any life insurance company.

(10) "Property" means personal property, of every kind or description, tangible or intangible, in the possession or under the control of a holder, as hereinafter defined, and includes, but not by way of limitation, (i) money; (ii) bills of exchange; (iii) intangible ownership interests in corporations, whether or not represented by a stock certificate, bonds and other securities; (iv) credits, including wages and other allowances for services earned or accrued on or after January 1, 1958, money orders and traveler's checks, also proceeds held for unredeemed gift certificates; (v) dividends, cash or stock; (vi) certificates of membership in a corporation or association; (vii) security deposits; (viii) funds deposited by holder with fiscal agents of fiduciaries for payment to owner of dividends, coupon interest and liquidation value of stocks and bonds; (ix) funds to redeem stocks and bonds; (x) amounts refundable from excess or increased rates or charges heretofore or hereafter collected by a corporation for utility services lawfully furnished by it which have been or shall hereafter lawfully be ordered refunded to consumers or other persons entitled thereto and any interest due thereon and which have remained unclaimed by the persons entitled thereto for 7 years from the date they became payable in accordance with the final determination or order providing for the refunds; (xi) amounts refundable from customer deposits heretofore or hereafter collected by a public utility and any interest due thereon, and which have remained unclaimed by the persons entitled thereto for 7 years from the date they become payable; and (xii) all other liquidated choses in action of whatsoever kind or character. The word "property" does not include credits or deposits evidenced by cash balances on unclaimed or refused personal property nor any property, except the items specified in this subdivision, the right to recover which in a proceeding brought by the owner would be barred by any statute of limitations, state or federal. (12 Del. C. 1953, § 1198; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, §§ 1-3; 59 Del.

Laws, c. 320, §§ 1, 2; 63 Del. Laws, c. 311, § 4; 65 Del. Laws, c. 351, §§ 1-3.)

§ 1199. Report by holders of abandoned property.

(a) Every holder of funds or other property, tangible or intangible, deemed abandoned under this subchapter shall file with the State Escheator, on or before June 30 of each year, as of December 31 next preceding, a report, in duplicate, with respect to such property. The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property deemed abandoned under this subchapter;

(2) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under $50 each may be reported in aggregate;

(3) The date when the property became payable, demandable or returnable and the date of the last transaction with the owner with respect to the property; and

(4) Other information which the State Escheator may prescribe.

(b) Upon written request the State Escheator may grant an extension of time with respect to the date for filing the report.

(c) The requirements of this section for filing an annual report shall not apply to municipal corporations or counties and the fiscal officers thereof.

(d) Verification, if made by a partnership, shall be executed by a partner, if made by an unincorporated asso-

ciation or private corporation, by an officer and if made by a public corporation, by its chief fiscal officer.

(e) If the person holding property deemed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(f)(1) With respect to any stock or other certificate of ownership or any dividend, profit, distribution, interest, payment on principal or other sum held owing by a corporation or other business association for or to a shareholder, certificate holder, member, bondholder or other security holder, the initial report filed under this section shall include all such items of property deemed abandoned under this subchapter without limitation as to time.

(2) Except as provided in paragraph (1) of this subsection, the initial report shall include all such items of property which, under this subchapter, would have been deemed abandoned on the effective date of this subchapter had this subchapter been in effect on January 1, 1964 (12 Del. C. 1953, § 1199; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, § 4.)

§ 1200. Notice and publication of lists of abandoned property.

(a) Within 30 days after receiving the report of abandoned property required by § 1199 of this title, the State Escheator shall cause to be published a notice entitled: "NOTICE OF NAMES OF PERSONS APPEARING TO BE OWNERS OF ABANDONED PROPERTY."

(b) Such notice shall be published at least once each week for 2 successive weeks in a newspaper in the county

in this State in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this State, the notice shall be published in the county in which the holder has his principal place of business. If the holder has no principal place of business in this State, then notice shall be published in the County of New Castle.

(c) The published notice shall contain the names in alphabetical order and last known addresses, if any, of persons listed in the report, a brief description of the property and a statement that if proof of claim is not presented by the owner to the holder within 60 days from date of publication the abandoned property shall be paid to or placed in the custody of the State Escheator, to whom all further claims must thereafter be directed.

(d) The State Escheator shall not be required to publish in such notice items of value under $50 each. (12 Del. C. 1953, § 1200; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, § 5.)

§ 1201. Payment or delivery of abandoned property.

Ninety days after filing the report required by § 1199 of this title, every holder of abandoned property shall pay or deliver to the State Escheator all abandoned property specified in the report, except that if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the 90-day period specified in § 1200 of this title, or if it appears that for some other reason the reported abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be deemed abandoned, to the State Escheator, but in lieu

thereof shall file a verified written explanation of the proof of claim or other reason. The holder of any intangible ownership interest in a corporation deemed abandoned under this subchapter shall, when making the delivery contemplated by this section:

(1) If such interest is a certificated security as defined in § 8-102(1) of Title 6 deliver either the original stock certificate evidencing the abandoned property, if such is in its possession or a duly issued replacement certificate evidencing such property in a form suitable for transfer; or

(2) If such interest is an uncertificated security as defined in § 8-201(1) of Title 6 cause such uncertificated security to be registered in the name of the State Escheator. (12 Del. C. 1953, § 1201; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, § 6; 65 Del. Laws, c. 351, § 4.)

§ 1202. Periods of limitation not a bar.

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of propery, shall not prevent the money or property from being deemed abandoned property nor affect any duty to file a report required by this subchapter or to pay or deliver abandoned property to the State Escheator. (12 Del. C. 1953, § 1202; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, § 7.)

§ 1203. Effect of payment and delivery.

(a) The payment or delivery of property to the State Escheator by any holder shall terminate any legal relationship between the holder and the owner and shall release and discharge such holder from any and all liability to the

owner, his heirs, personal representatives, successors and assigns by reason of such delivery or payment, regardless of whether such property is in fact and in law abandoned property and such delivery and payment may be pleaded as a bar to recovery and shall be a conclusive defense in any suit or action brought by such owner, his heirs, personal representatives, successors and assigns or any claimant against the holder by reason of such delivery or payment.

(b) Upon the delivery in good faith of a duplicate certificated security to the State Escheator or the registration of an uncertificated security to the State Escheator pursuant to § 1201 of this title, the holder and any transfer agent, registrar or other person acting for or on behalf of the holder in executing or delivering such duplicate certificate or effectuating such registration, is relieved of all liability of every kind to every person, including any person acquiring the original of a certificated security or the duplicate of a certificated security issued to the State Escheator, for any losses or damages resulting to any person by issuance and delivery to the State Escheator of the duplicate certificated security or the registration to his name of an uncertificated security.

(c) If the holder pays or delivers property to the State Escheator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the State Escheator acting on behalf of the State, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(d) For the purposes of this section, "good faith" means that:

(1) Payment or delivery was made in a reasonable attempt to comply with this subchapter;

(2) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this subchapter; and

(3) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry. (12 Del. C. 1953, § 1203; 58 Del. Laws, c. 426, § 8; 65 Del. Laws, c. 351, § 5.)

§ 1204. Sale of abandoned property.

(a) All abandoned property, other than money, delivered to the State Escheator under this subchapter shall be sold or disposed of in accordance with § 1143 of this title.

(b) All sales of property made by the State Escheator under this subchapter shall pass absolute title to the purchaser. The State Escheator or the Secretary of State shall execute all documents necessary to complete the transfer of title. (12 Del. C. 1953, § 1204; 58 Del. Laws, c. 426, § 9.)

§ 1205. Deposit and disbursement of funds.

(a) All funds received by the State Escheator under this subchapter, including the proceeds of sale under § 1204 of this title shall forthwith be paid and deposited into the General Fund of the State.

(b) All disbursements for expenses, claims, storage, etc., made or authorized by the State Escheator in connec-

tion with the administration of this subchapter shall be paid by the Secretary of Finance upon presentation of a signed voucher by the State Escheator. (12 Del. C. 1953, § 1205; 58 Del. Laws, c. 426, § 10.)

§ 1206. Claims for abandoned property paid or delivered; determination of claims; appeals.

(a) Any person claiming an interest in any property paid or delivered to the State Escheator under this subchapter may file a claim thereto or to the proceeds from the sale thereof with the State Escheator.

(b) The determination of claims and rights of appeal shall be accomplished as prescribed in § 1146(b) of this title.

(c) When property is paid or delivered to the State Escheator under this subchapter, the owner is not entitled to receive income or other increments accruing thereafter. (12 Del. C. 1953, § 1206; 58 Del. Laws, c. 426, § 11.)

§ 1207. Penalties; proceeding to compel delivery.

(a) Any person failing to report or pay over any amounts or property as required by this subchapter shall be subject to a civil penalty of $25 for each day such report or payment is withheld, not to exceed a maximum of $2,500, except that the State Escheator may extend the time for filing the report or making payment and may waive all or any portion of the penalty if the failure is due to reasonable cause. Provided, however, in no case shall the penalty imposed exceed 100% of the amount required by this subchapter to be reported or paid to the State Escheator.

(b) If any person refuses to pay or deliver property to the State Escheator as required by this subchapter, the

Escheator may bring an action in the Court of Chancery of the county where the holder resides or has his principal place of business to enforce such payment or delivery. (12 Del. C. 1953, § 1207; 58 Del. Laws, c. 426, § 12; 63 Del. Laws, c. 311, § 3.)

§ 1208. Rules and regulations.

The State Escheator may make such rules and regulations as he may deem necessary to administer and enforce this subchapter. (12 Del. C. 1953, § 1208; 58 Del. Laws, c. 426, § 13.)

§ 1209. Examination of records.

Whenever the State Escheator has reason to believe that a person has failed to report property which should have been reported pursuant to this subchapter, the State Escheator may petition the Court of Chancery for an order requiring such person to produce for examination, at a reasonable time and place, such of his books, records or papers as are reasonably necessary for the State Escheator to determine whether a report was required. (12 Del. C. 1953, § 1209; 58 Del. Laws, c. 426, § 14.)

§ 1210. Effect of laws of other states.

This subchapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to July 13, 1971. (12 Del. C. 1953, § 1210; 58 Del. Laws, c. 426, § 15.)

§ 1211. Property presumed abandoned or escheated under the laws of another state.

Notwithstanding any other provisions of this subchapter, if specific property which is subject to this subchapter

is held for or owed or distribuable to an owner whose last known address is in another state, such specific property is not presumed abandoned in this State and is not subject to this subchapter if such property may be claimed as abandoned or escheated under the laws of such other state. (12 Del. C. 1953, § 1211; 58 Del. Laws, c. 426, § 16.)

EXHIBIT B

NEW YORK ESCHEAT LAW

Article V-A—Unclaimed Property Held by Brokers

§ 510. **Definitions**

When used in this article, the following items shall have the following meanings:

1. "Corporation" shall include any joint stock company, corporation, association of two or more individuals, committee, public authority, or business trust.

2. "Public issuer" shall include the United States, the several states and territories thereof, political subdivisions and municipal corporations within such states and territories, foreign countries and political subdivisions and municipal corporations within such foreign countries.

3. "Security" shall include:

(a) Any instrument issued by a corporation or public issuer to evidence an obligation to make any payment of the principal amount of a debt or of any increment due or to become due thereon, or

(b) Any instrument issued by a corporation to evidence a proprietary interest therein except:

(i) A policy of insurance issued by a mutual insurance corporation, or

(ii) A share issued by a savings and loan association, a building and loan association, or a credit union.

4. "Broker" shall include any individual or corporation engaging in this state in the purchase, sale or exchange of securities for or on behalf of any customer but shall

not include a banking organization as defined in section one hundred three of this chapter.

5. "Dealer" shall include any individual or corporation engaging in this state as a regular business in the purchase, sale or exchange of securities for his or its own account, through a broker or otherwise, but shall not include a banking organization as defined in section one hundred three of this chapter.

6. (a) "Customer" shall include any individual or corporation entering into a contract in this state with a broker or dealer by which such broker or dealer agrees to effect the purchase, sale, or exchange, or to keep custody of any security for on on behalf of such individual or corporation. The term "customer" shall also include any individual or corporation entering into a contract in this state with a broker or dealer whereby such broker or dealer for his own account buys from or sells to such individual or corporation, any security.

(b) If on the books of account located at an office in this state of a broker or dealer there is indicated a balance to the credit of an individual or corporation it shall be presumed unless established to the contrary that such balance arose from a contract as described in the preceding paragraph.

7. "Amount" shall include any dividend, profit or other distribution, paid in stock or cash, and any interest or other payment on principal.

8. "Wages" shall include moneys payable, under contract or otherwise, for services rendered to a broker or dealer, less lawful deductions.

(Added L.1952, c. 461, § 1; amended L.1965, c. 539, § 4; L.1972, c. 23, § 1; L.1980, c. 46, § 4.)

§ 511. Unclaimed property; when deemed abandoned

The following unclaimed property shall be deemed abandoned property:

1. Any amount (a) received in this state after June thirtieth, nineteen hundred forty-six by a broker or dealer or nominee of such broker or dealer as the holder of record of a security remaining unpaid to the person entitled thereto for three years following the receipt thereof, or (b) when paid to such broker, dealer or nominee on or with respect to a security which has been deemed abandoned.

1-a. Any amount (a) received in this state on or after July first, nineteen hundred seventy-four by a broker or dealer or nominee of such broker or dealer other than as the holder of record of a security remaining unpaid to the person entitled thereto for three years following the receipt thereof, or (b) when paid to such broker, dealer or nominee on or with respect to a security which has been deemed abandoned.

2. Any amount (a) received in this state after June thirtieth, nineteen hundred forty-six due from a broker or dealer or nominee of such broker or dealer to a customer which has remained unpaid to the customer for three years after the date of the last entry, other than the receipt of dividends or interest in the account of such broker, dealer or nominee with such customer, or (b) payable on or with respect to a security which has been deemed abandoned.

3. Any security held in this state by a broker or dealer, or nominee of such broker or dealer, as the holder of record of a security for a customer or for a person or persons unknown to such broker or dealer or nominee

where, for three successive years, all amounts paid thereon or with respect thereto and received after June thirtieth, nineteen hundred forty-six by such broker or dealer or nominee have remained unclaimed.

Provided, however, that if any amount or security specified in subdivision one, two or three of this section is reflected, recorded or included in an account with respect to which such broker or dealer has on file evidence in writing received within the three years immediately preceding the thirty-first day of December preceding the date such amount or security would otherwise be payable or deliverable pursuant to section five hundred twelve that the person entitled thereto had knowledge of such account, then such amount or security shall not be deemed abandoned property.

4. Any security held by a broker or dealer or nominee of such broker or dealer reflected, recorded, or included in an account with respect to which, for three successive years, all statements of account or other communications which have been sent, via first class mail, to the customer at his last known address have been returned to such broker, dealer or nominee by the postal authorities for inability to locate the customer, and no written communication has been received from the customer by such broker, dealer or nominee, provided such security was received or is held in this state by such broker, dealer or nominee or the last known address of the customer is located in this state.

5. Any wages held and payable on or after July first, nineteen hundred sixty-six by a broker or dealer, as defined in section five hundred ten of this article, for the

benefit of a person or persons, known or unknown shall be deemed to be abandoned property, where for three successive years:

(a) All such wages have remained unpaid to such person, and

(b) No written communication has been received from such person by the holder, and

(c) Notice regarding such wages, if sent by the broker or dealer, via first class mail, to such person at his last known address has been returned to the broker or dealer by the postal authorities for inability to locate such person.

6. Any broker or dealer who satisfies the requirements of this subdivision may determine the property which on the thirty-first day of December in the years nineteen hundred seventy-two, nineteen hundred seventy-three, nineteen hundred seventy-four and nineteen hundred seventy-five shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine, and nineteen hundred seventy by the method hereinafter in this subdivision described and the amount so determined as at any such date shall be deemed to be all of such abandoned property held by such broker or dealer pursuant to subdivisions one and three of this section on such date.

The broker or dealer shall compute separately for each of the years nineteen hundred sixty-five and nineteen hundred sixty-six (each of which years is referred to in this subdivision as a "base year") the total value of all

stock and cash dividends received by such broker or dealer, or nominee of such broker or dealer, in this state during such year as the holder of record of a security. The value of any dividend paid in stock shall be the mean price of such stock during the calendar month in which the dividend was received as reported by any generally recognized statistical service or, if not so reported, as established in any other manner satisfactory to the state comptroller. The total value of all such stock and cash dividends thus determined for each base year shall be the denominator for that base year. The broker or dealer shall then determine the total value of all such dividends received during each base year belonging to unknown owners as reported to the state comptroller, or as required to be so reported pursuant to this article, which continued to be held by such broker or dealer, or nominee of such broker or dealer, unpaid to the person entitled thereto on the December thirty-first occurring five years after the close of such base year. To the extent any such dividends which continued to be so held unpaid on any such December thirty-first consisted of stock, such stock shall be valued at the mean price of such stock during the calendar month ending on such December thirty-first as reported by any generally recognized statistical service or, if not so reported, as established in any other manner satisfactory to the state comptroller. The total value of such remaining dividends thus determined for each base year shall be the numerator for that base year. The sum of the numerators for the base years shall be divided by the sum of the denominators for the base years and the result thus obtained shall be multiplied by two. The product obtained as the result of such multiplication shall be the average factor of such broker or dealer.

In order to determine the property which on the thirty-first day of December, nineteen hundred seventy-two shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-seven the broker or dealer shall determine (i) the total value of all stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-seven as the holder of record of a security and shall multiply such total value by the average factor of such broker or dealer, (ii) the aggregate amount of stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-seven as the holder of record of a security for a person or persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-two in covering stock and cash dividends which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-seven but, according to the books and records of such broker or dealer, were not received, and (iii) the aggregate amount of interest payments received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-seven on securities held for persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-two in covering interest payments which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-seven but, according to the

books and records of such broker or dealer, were not received. The greater of the two amounts determined pursuant to clauses (i) and (ii) of the preceding sentence, plus the amount determined pursuant to clause (iii) of such sentence, shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-seven on the thirty-first day of December nineteen hundred seventy-two.

In order to determine the property which on the thirty-first day of December, nineteen hundred seventy-three shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-eight the broker or dealer shall determine (i) the total value of all stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nieteen hundred sixty-eight as the holder of record of a security and shall multiply such total value by the average factor of such broker or dealer, (ii) the aggregate amount of stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-eight as the holder of record of a security for a person or persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-three in covering stock and cash dividends which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-eight but, according to the books and records of such broker or dealer, were not received, and (iii) the

aggregate amount of interest payments received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-eight on securities held for persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-three in covering interest payments which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-eight but, according to the books and records of such broker or dealer, were not received. The greater of the two amounts determined pursuant to clauses (i) and (ii) of the preceding sentence, plus the amount determined pursuant to clause (iii) of such sentence, shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-eight on the thirty-first day of December, nineteen hundred seventy-three.

In order to determine the property which on the thirty-first day of December, nineteen hundred seventy-four shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-nine the broker or dealer shall determine (i) the total value of all stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-nine as the holder of record of a security and shall multiply such total value by the average factor of such broker or dealer, (ii) the aggregate amount of stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such

broker or dealer, in this state during nineteen hundred sixty-nine as the holder of record of a security for a person or persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-four in covering stock and cash dividends which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-nine but, according to the books and records of such broker or dealer, were not received, and (iii) the aggregate amount of interest payments received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-nine on securities held for persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-four in covering interest payments which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred sixty-nine but, according to the books and records of such broker or dealer, were not received. The greater of the two amounts determined pursuant to clauses (i) and (ii) of the proceding sentence, plus the amount determined pursuant to clause (iii) of such sentence, shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-nine on the thirty-first day of December nineteen hundred seventy-four.

In order to determine the property which on the thirty-first day of December, nineteen hundred seventy-five shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred seventy the broker or dealer shall deter-

mine (i) the total value of all stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred seventy as the holder of record of a security and shall multiply such total value by the average factor of such broker or dealer, (ii) the aggregate amount of stock and cash dividends (valued as above provided) received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred seventy as the holder of record of a security for a person or persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-five in covering stock and cash dividends which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred seventy but, according to the books and records of such broker or dealer, were not received, and (iii) the aggregate amount of interest payments received by such broker or dealer, or nominee of such broker or dealer, in this state during nineteen hundred sixty-nine on securities held for persons unknown to such broker or dealer, less the cost incurred by such broker or dealer not later than the thirty-first day of December, nineteen hundred seventy-five in covering interest payments which should have been received by such broker or dealer, or nominee of such broker or dealer, during nineteen hundred seventy but, according to the books and records of such broker or dealer, were not received. The greater of the two amounts determined pursuant to clauses (i) and (ii) of the preceding sentence, plus the amount determined pursuant to clause (iii) of such sentence, shall be deemed abandoned property pursuant to

subdivisions one and three of this section relating to the year nineteen hundred seventy on the thirty-first day of December, nineteen hundred seventy-five.

Each broker or dealer which uses the procedure described above in the subdivision shall maintain for a period of not less than six years commencing January first, nineteen hundred seventy-two, books and records evidencing the receipt of dividends in this state for each of the base years, and the payment thereof over the five years succeeding each base year.

Any broker or dealer who chooses to determine the property wihch on the thirty-first day of December in the years nineteen hundred seventy-two or nineteen hundred seventy-three shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the years nineteen hundred sixty-seven or nineteen hundred sixty-eight by the method described in this subdivision shall thereafter determine the property which on the thirty-first day of December in each subsequent year ending not later than December thirty-first, nineteen hundred seventy-five shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to a year not later than nineteen hundred seventy by the method described in this subdivision. No broker or dealer may choose to determine the property which on the thirty-first day of December in the years nineteen hundred seventy-four or nineteen hundred seventy-five shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the years nineteen hundred sixty-nine or nineteen hundred seventy by the method described in this subdivision unless such broker or dealer shall have

used the method described in this subdivision to determine the property which on the thirty-first day of December in the year nineteen hundred seventy-three shall be deemed abandoned property pursuant to subdivisions one and three of this section relating to the year nineteen hundred sixty-eight.

The method of determining abandoned property pursuant to subdivisions one and three of this section as described in this subdivision shall be available only to such brokers or dealers as have made written reports pursuant to section five hundred thirteen in each of the years nineteen hundred seventy-one and nineteen hundred seventy-two covering each of the base years.

In the event that an audit of a broker or dealer by the state comptroller establishes that one or more of the dollar values determined by the broker or dealer for the purpose of computing the average factor of such broker or dealer pursuant to this subdivision was incorrect, the corrected average factor of such broker or dealer established as a result of such audit shall be determined to be the average factor required to be used by such broker or dealer in determining abandoned property pursuant to this subdivision.

Any broker or dealer who does not determine abandoned property pursuant to subdivisions one and three of this section by the method described in this subdivision and who during any of the calendar years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine or nineteen hundred seventy received in this state any stock dividend as the holder of record of a security for a person or persons unknown to such broker

or dealer and who sold any such stock dividend during any such or subsequent calendar year, shall pay the proceeds of such sale to the state comptroller not later than the thirty-first day of December, nineteen hundred seventy-three and such proceeds shall, for all purposes of this chapter be deemed abandoned property on the thirty-first day of December of the calendar year during which such sale takes place.

(Added L.1952, c. 461, § 1; amended L.1963, c. 815, § 6; L. 1965, c. 539, § 5; L.1972, c. 23, § 2; L.1973, c. 617, §§ 2, 6; L.1980, c. 46, § 5; L.1983, c. 767, §§ 3, 4.)

§ 512. Payment or delivery of abandoned property

1. In the month of March of each year, and on or before the tenth day thereof, every broker or dealer shall pay or deliver to the state comptroller all property which on the preceding thirty-first day of December was deemed abandoned property pursuant to section five hundred eleven excepting such property as since that date has ceased to be abandoned.

2. Where any security delivered to the state comptroller pursuant to subdivision one hereof, is delivered by him to the issuing corporation, the security shall be transferred to him on the books of the corporation and a certificate registered in the name of the state comptroller shall be delivered to him. The corporation and its transfer agent, registrar or other person acting for or on behalf of the corporation in executing or delivering such certificate shall be relieved from liability to any person for any losses or damages resulting from the issuance and delivery to the state comptroller of such certificate.

(Added L.1952, c. 461, § 1; amended L.1963, c. 815, § 7; L.1973, c. 213, § 1; L.1974, c. 382, § 1.)

§ 513. Report to accompany payment or delivery

A payment or delivery pursuant to section five hundred twelve shall be accompanied by a verified written report, in such form as the state comptroller may prescribe, setting forth:

1. With reference to any amount specified in subdivision one of section five hundred eleven,

(a) A description of the security,

(b) The number of shares represented or the face amount of the security,

(c) The date the dividend or interest was payable, and

(d) Such other information as the state comptroller may require.

2. With reference to any amount specified in subdivision two of section five hundred eleven,

(a) The name and last known address, if any, of the customer entitled to such amount,

(b) The date of the last entry, other than the credit of interest or dividends, in the account in which such amount is reflected, recorded or included, and

(c) Such other information as the state comptroller may require.

3. With reference to any security specified in subdivision three or four of section five hundred eleven,

(a) A description of the abandoned security,

(b) The number of shares represented or the face amount of the security,

(c) The name and last known address, if any, of the peron appearing to be entitled to such abandoned property, and

(d) Such other information as the state comptroller may require.

4. In case any broker or dealer shall on the thirty-first day of December in any year neither hold nor owe any abandoned property specified in section five hundred eleven, such broker or dealer shall on or before the tenth day of March next succeeeding make a verified written report to the State Comptroller so stating.

5. In case any broker or dealer determines the property which shall be deemed abandoned property pursuant to subdivisions one and three of section five hundred eleven by the method provided in subdivision six of that section, the payment of such abandoned property shall be accompanied by a verified written report, in such form as the state comptroller may prescribe, which among other things, shall set forth the computation of the average factor of such broker or dealer pursuant to subdivision six of section five hundred eleven. Each verified written report accompanying the payment of abandoned property determined pursuant to subdivision six of section five hundred eleven shall contain an undertaking by the broker or dealer making such payment to honor all claims to the extent herein provided whenever made against such broker or dealer by any person determined by him or proved to be entitled to receive from him a stock or cash dividend received in this state during the calendar year covered by such report as the holder of record of a security or an interest payment on a security received in this state during

such year. Such undertaking shall obligate the broker or dealer to honor any such claim provided that the payment of abandoned property relating to the year in question determined pursuant to subdivision six of section five hundred eleven made by such broker or dealer to the state comptroller has been exhausted as a result ow reimbursements by the state comptroller to the broker or dealer or to other persons claiming such abandoned property as provided in subdivision two of section five hundred fourteen. To the extent related to any stock dividend, any such claim shall not exceed the fair market value of such stock dividend on the thirty-first day of December of the year in which such stock dividend was deemed abandoned property. (Added L.1952, c. 461, § 1; amended L.1963, c. 815, § 8; L.1965, c. 539, § 6; L.1973, c. 617, § 3.)

§ 513-a. Retention of books and records

1. Every broker or dealer shall retain the books and records set forth in subdivision two of this section relating to the years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine and nineteen hundred seventy for a period of ten years following the end of the year in which created; shall retain all such books and records relating to the year nineteen hundred seventy-one for a period of nine years following the close of nineteen hundred seventy-one; and shall retain all such books and records relating to any subsequent calendar year for a period of eight years following the end of the year in which created. The books and records so retained shall be made available to the state comptroller upon his request in the performance of his duties under this chapter.

2. The following books and records shall be those referred to in subdivision one of this section: general ledgers,

customers ledgers; daily and weekly stock position records; dividend sheets; cash blotters; purchase and sales blotters; daily journals; bank reconciliations; cancelled checks; claim letters; independent auditor's reports; trial balances; private ledgers; financial statements and supporting data; chart of accounts; and copies of abandoned property reports. (Added L.1973, c. 617, § 4.)

§ 514. Reimbursement of brokers or dealers

1. A broker or dealer which has paid or delivered to the state comptroller abandoned property pursuant to section five hundred twelve may elect to make payment to the person entitled thereto. A broker or dealer making such payment may file claim for reimbursement by the state comptroller. The state comptroller upon satifactory proof of such payment shall, after audit, reimburse such broker or dealer. In no event, however, shall such reimbursement exceed the amount to which the claimant is entitled pursuant to subdivision two of section fourteen hundred three of this chapter.

2. A broker or dealer which has paid to the state comptroller abandoned property relating to any of the years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine or nineteen hundred seventy, determined pursuant to subdivision six of section five hundred eleven, may elect thereafter to make payment to a person entitled to receive (i) a stock or cash dividend received in this state during any such year by such broker or dealer, or nominee of such broker or dealer, as the holder of record of a security, or (ii) an interest payment on a security received in this state during any

such year by such broker or dealer, or nominee of such broker or dealer. A broker or dealer making any such payment may file claim for reimbursement by the state comptroller. Subject to the provisions of this subdivision, the state comptroller upon satisfactory proof that a broker or dealer has made payment to the person entitled thereto shall, after audit of such claim, reimburse such broker or dealer. In no event shall the amount or amounts reimbursed by the state comptroller to a broker or dealer relating to any of the years nineteen hundred sixty-seven, nineteen hundred sixty-eight, nineteen hundred sixty-nine or nineteen hundred seventy, plus amounts paid by the state comptroller to any person claiming such abandoned property relating to any of such years, exceed the amount paid by the broker or dealer to the state comptroller pursuant to subdivision six of section five hundred eleven relating to such year. In no event shall the amount paid by the state comptroller to any person claiming a stock dividend received by a broker or dealer, or nominee of such broker or dealer, in any of such years, or to a broker or dealer in reimbursement of any such claim paid by such broker or dealer, exceed the value of such stock dividend as most recently reported by any generally recognized statistical service on the thirty-first day of December of the year in which such stock was deemed abandoned property. (Added L.1952, c. 461, § 1; amended L.1963, c. 815, § 9; L.1968, c. 663, § 2; L.1973, c. 617, § 5.)

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Article XIV—General Provisions

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§ 1404. Assumption of liability by the state; return of property erroneously paid to state comptroller.

1. The care and custody, subject only to the duty of conversion prescribed in section fourteen hundred two of this chapter, of all abandoned property heretofore paid to the state, except

(i) abandoned property in individual amounts of less than one dollar so paid pursuant to chapter one hundred seven of the laws of nineteen hundred forty-two; and of all abandoned property paid to the state comptroller pursuant to this chapter;

(ii) abandoned property so paid pursuant to chapter seven hundred twenty-seven of the laws of nineteen hundred twenty-six, or as such chapter was amended by chapter five hundred sixty-nine of the laws of nineteen hundred twenty-seven, and section sixty of chapter fifty-four of the laws of nineteen hundred twenty-nine, prior to June first, nineteen hundred forty-one; is hereby assumed for the benefit of those entitled to receive the same, and the state shall hold itself responsible for the payment of all claims established thereto pursuant to law, less any lawful deductions, which cannot be paid from the abandoned property fund.

2. Any person, copartnership, unincorporated association or corporation making a payment of or delivering abandoned property to the comptroller shall immediately and thereafter be relieved and held harmless from any or all liability for any claim or claims which exist at such time with reference to such abandoned property or which may thereafter be made or may come into existence on account of or in respect of any such abandoned property.

3. No action shall be maintained against any person, copartnership, unincorporated association or corporation, or any officer thereof, for

(a) the recovery of abandoned property paid or delivered to the state comptroller pursuant to this chapter or for interest thereon subsequent to the date of the report of such abandoned property to the state comptroller pursuant to this chapter;

(b) the recovery of abandoned property heretofore paid or delivered to the state or for interest thereon subsequent to the date of such payment or delivery; or

(c) damages alleged to have resulted from any such payment or delivery.

4. Whenever it appears to the satisfaction of the state comptroller that because of some mistake of fact, error in calculation or erroneous interpretation of a statute, any person has paid or delivered to the state comptroller, pursuant to any provision of this chapter, any moneys or other property not required by the provisions of this chapter to be so paid or delivered, he shall have power, during the six years immediately succeeding such erroneous payment or delivery, to refund or redeliver such moneys or other property to such person; provided that such moneys or property shall not have been paid or delivered to a claimant or otherwise disposed of in accordance with the provisions of this article. Moneys or other property deposited with a county treasurer or the commissioner of finance of the city of New York for the benefit of an infant pursuant to court order, which are or have been erroneously paid or delivered to the state comptroller, may be refunded by the state comptroller at any time. Any such refund hereunder shall be paid from the abandoned property fund without the deduction of any service charge.

5. Whenever, because of some mistake of fact, error in calculation or erroneous interpretation of a statute, any person pays or delivers to the state comptroller any moneys or other property not required by the provisions of this chapter to be so paid or delivered, such moneys or other property shall, for the purposes of this article, be deemed to be abandoned property, unless and until refunded or redelivered by the state comptroller to the person who paid or delivered the same to him. (As amended L.1946, c. 658, § 3; L.1946, c. 906, §§ 1, 2; L1963, c. 815, §§ 11, 12; L.1965, c. 539, § 7; L.1968, c. 457, § 2; L.1969 c. 407, § 5; L.1978, c. 655, § 5.)

EXHIBIT C

ABANDONED PROPERTY LAW HANDBOOK FOR BROKERS AND DEALERS

1983 EDITION

[SEAL]

EDWARD V. REGAN
STATE COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

ALBANY, NEW YORK 12236

[PHOTO]

FOREWORD

The New York State Abandoned Property Law requires the transfer of certain unclaimed property to the custody and protection of the State Comptroller. In order to protect the interests of rightful owners and facilitate the return to them of their property (there is no statute of limitations on owners' claims), specific reporting and refund claim procedures have been established.

This handbook is published to inform brokers and dealers in securities concerning their responsibilities under Article V-A. It will assist in the preparation of related abandoned property reports and explain the procedures to be followed on claims for refunds. We earnestly request your cooperation in following the instructions contained in this handbook.

Brokers and dealers are also subject to other articles of the Abandoned Property Law such as Article V and Article XIII, Section 1315. Reporting responsibilities and instructions relative to Article V and Article XIII, Section 1315 are set forth in a separate issuance.

Questions concerning the preparation of abandoned property reports should be referred to the Office of the State Comptroller, Bureau of Abandoned Property, Governor Alfred E. Smith State Office Building, Albany, New York 12236.

/s/ Edward V. Regan
EDWARD V. REGAN
State Comptroller

* * *

INTRODUCTION

DEFINITION OF BROKERS AND DEALERS

Article V-A of the Abandoned Property Law applies to unclaimed property held by brokers or dealers. The statute defines a "broker" as any individual or corporation engaging in New York in the purchase, sale or exchange of securities for or on behalf of any customer while a "dealer" includes any individual or corporation engaging in New York as a regular business in the purchase, sale or exchange of securities for his or its own account, through a broker or otherwise. The chief distinction between the two is that a "Broker" acts on behalf of a customer in security transactions, whereas a "Dealer" makes transactions as a regular business for his or its own account.

PART 1

DUTIES OF BROKERS AND DEALERS PURSUANT TO ARTICLE V-A OF THE ABANDONED PROPERTY LAW

REPORT AND PAYMENT OR DELIVERY OF ABANDONED PROPERTY

Every broker or dealer must submit to the State Comptroller during the first ten days of the month of March, a report of abandoned property together with a remittance payable to the Comptroiler, State of New York in the total cash amount of the report and the delivery of any securities reported therein.

The report must list all the items which were deemed abandoned property as of December 31 preceding. Items

which thereafter ceased to be abandoned property are to be deleted from the payment and delivery to the State Comptroller by ruling a single line through the entire listed item and indicating to the right of the amount the manner in which such item ceased to be abandoned and the date thereof. Cash items of three dollars and less may be reported in an aggregate amount.

Securities to be delivered to the State Comptroller may be left in their existing registration. It is suggested that securities be sent with the report of abandoned property and remittance by registered mail to the Office of the State Comptroller, Capitol Station Annex, P.O. Box 7009, Albany, New York 12225.

Eligible securities may also be delivered to the State Comptroller by wire transfer to the State's liquidating agent via Depository Trust Company. Prior approval is required and may be obtained together with reporting instructions from the Bureau of Abandoned Property.

Instructions for preparing reports will be found on pages 15 through 20 of this handbook.

NEGATIVE REPORTS

Even though a broker or dealer neither holds nor owes abandoned property on December 31, it is required to make a report. Such negative report is due on or before March 10.

REPORT FORMS

Reports are to be rendered on official forms furnished by the Office of the State Comptroller. To insure a timely and adequate delivery of forms, it is requested that as

soon as practicable after November 30 each broker or dealer inform the State Comptroller as to the approximate number of abandoned property items over $3 to be reported in each of the several established classifications. The classifications of items and the forms to be used for each classification are presented on pages 15 and 16 of this handbook. Requests for forms should be directed to the Office of the State Comptroller, Bureau of Abandoned Property, Governor A. E. Smith State Office Building, Albany, New York 12236. Should the broker or dealer desire to use its own forms (e.g. electronic data processing system print-outs), advance approval must be obtained from the State Comptroller.

PENALTY FOR FAILURE TO REPORT OR FILE

Section 1412 of the Abandoned Property Law provides for a penalty of $100 for each day a full and complete report or affidavit is willfully delayed or withheld.

INTEREST CHARGE FOR LATE PAYMENT OR DELIVERY OF ABANDONED PROPERTY TO THE STATE

Section 1412 of the Abandoned Property Law provides for the payment of interest on any late payment of abandoned property for the period beginning on the date payment was due and concluding on the date payment is made. Interest is at the rate of 6% per annum for any period of lateness prior to June 29, 1981 and at the rate of 10% per annum for any period of lateness on or after June 29, 1981. The interest charge on securities is on its value as determined from the closing price of the securities as of the tenth day of March when delivery was due.

The State Comptroller is authorized by statute to waive the payment of all or part of such interest (or penalty) and to extend the time for making a report or filing an affidavit whenever in his opinion the circumstances warrant it.

PENALTY FOR FRAUDULENT RETURNS

The filing of a willfully false report or the making of a false verification is punishable under the provisions of the Penal Law. (Sec. 1413)

PAYMENT BY BROKERS OR DEALERS TO PERSONS ESTABLISHING RIGHT TO RECEIVE ABANDONED PROPERTY

Abandoned property (unclaimed as of December 31) will be paid by a broker or dealer on or before February 28 (or February 29) to persons satisfactorily establishing their right to receive such property. After February 28 (or February 29), all claims for abandoned property should be presented to the State Comptroller. An item paid by a broker or dealer on or before February 28 (or 29) is removed from the status of abandoned property. It must, however, be listed in the report of abandoned property but shown as deleted by ruling a single line through the entire item and indicating that the item was paid and the date of payment.

* * *

BROKERS AND DEALERS NOT LIABLE AFTER PAYMENT TO THE STATE

The Abandoned Property Law provides that the State assumes liability for the payment of all claims for abandoned property paid to the State.

The law also provides that the broker or dealer making a payment or delivery of abandoned property to the State Comptroller shall not be held liable for any claims in respect to such property. It further provides that no action shall be maintained against a broker or dealer for the recovery of abandoned property paid or delivered to the State Comptroller, or interest thereon, or for damages alleged to have resulted from any such payment. (Sec. 1404)

RETURN OF PROPERTY ERRONEOUSLY PAID TO THE STATE COMPTROLLER

The State Comptroller is empowered to return property within six years after receipt to any person who because of mistake, error in calculation or misinterpretation of the statute, had paid or delivered such property to the State Comptroller. Property erroneously paid or delivered is considered to be abandoned property until refunded or returned by the State Comptroller and no liability attaches to a broker or dealer which makes such an erroneous payment or delivery. (Sec. 1404)

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PART 3

EXPLANATORY COMMENTS ON ARTICLE V-A

ABANDONED PROPERTY LAW

ITEMS DEFINED AS ABANDONED PROPERTY

An unclaimed amount owing by a broker or dealer is deemed abandoned property under one of six classifications established in Section 511. A seventh classification (Sec. 511.6) ceased to be effective after December 31, 1975.

1. The first class includes (a) any cash dividend and bond interest received in this state by a broker or dealer (or nominee) as the holder of record of a security which has remained unpaid to the person or persons entitled thereto for a period of three years following receipt, and (b) cash dividends and bond interest payable on or with respect to a security which has been deemed abandoned. The unpaid amounts in category (a) often occur when the broker or dealer ceases to hold the security at the time of receipt of the dividend or bond interest, the security having already been traded, and the persons or customers entitled to such payment cannot be identified (unknown). The unpaid amounts in category (b) are not subject to a three year waiting period and are reportable as abandoned property, if held, as soon as the security involved has been deemed abandoned or upon receipt, if received thereafter.

   These unpaid amounts are reportable in Schedule A of the Abandoned Property Report (Sec. 511, Subd. 1)

2. The second class includes (a) any cash dividend and bond interest received in this state on or after July first, nineteen hundred seventy-four by a broker or dealer (or nominee) other than as the holder of record of a security which has remained unpaid to the person or persons entitled thereto for a period of three years following receipt, and (b) cash dividends and bond interest payable on or with respect to a security which has been deemed abandoned. The unpaid amounts in category (a) often occur when the broker or dealer receives dividend or bond interest other than from a dividend disbursing agent, but rather from another broker or dealer as a result of an overpayment, and the persons or customers entitled to such payment cannot be identified (unknown). The unpaid amounts in category (b) are not subject to a three year waiting period and are reportable as abandoned property, if held, as soon as the security

involved has been deemed abandoned or upon receipt, if received thereafter.

These unpaid amounts are reportable in Schedule A of the Abandoned Property Report. (Sec. 511, Subd. 1-a)

3. The third class of abandoned property includes any cash and stock distributions due a customer, usually unlocatable, (a) which have remained unpaid to the customer for three years after the date of the last entry in the customer's account other than for an entry of the receipt of dividends or interest due the customer, or (b) on or with respect to a security which has been deemed abandoned. The three year waiting period does not apply to category (b) items which are reportable, if held, as soon as the security involved has been deemed abandoned, or, upon receipt, if received thereafter.

Checks issued by the broker or dealer in payment of such amounts due to customers, which have remained outstanding and uncashed, do not serve to exclude the amounts due customers from being deemed abandoned after the prescribed dormancy periods for the original debts have elapsed. The waiting period aside, the issued, outstanding checks therefore represent the "abandoned" amount due to a customer who, for example, can be an individual investor, another broker or dealer, or a banking organization.

Cash distributions received on unclaimed securities held on behalf of known but unlocated customers are to be reported on Schedule B of the abandoned property report. Stock distributions are always reported on Schedule C of such report. (Sec. 511, Subd. 2)

4. The fourth class consists of any securities held in this state for a customer or unknown person by a broker or dealer (or nominee), as the holder of record of a security where for three successive years, all amounts paid on the security by such broker or dealer (or nominee) have remained unclaimed. This class also includes any stock dividends received on such securi-

ties. These dividends are deemed abandoned when received. This class of unclaimed property generally results from an inability to identify the owner of the security, to locate the owner of a dormant customer account or to have a customer accept delivery of his securities or amounts paid thereon to which he is entitled. The unknown owner situation often occurs as discussed in subparagraph 1 above when a stock dividend is received by the broker or dealer after the underlying security had already been traded and delivered.

These securities are to be reported in Schedule C of the abandoned property report. (Sec. 511).

However, if at any time within the three years preceding the thirty-first day of December in any year, a broker or dealer has received from his customer evidence in writing indicating that the customer is aware of the existence of the account in which the unclaimed amount or security is recorded, then such unclaimed amount or security and the balance in the account shall not be deemed abandoned property. The three year dormancy period preceding abandonment recommences with each such written contact. (Sec. 511, Subd. 3, last paragraph)

5. The fifth class consists of any securities held by a broker or dealer (or nominee) recorded or included in an account where for three successive years, all statements of account or other communications which have been sent, via first class mail, to the customer at his last known address have been returned to such broker or dealer (or nominee) by the postal authorities for inability to locate the customer and no written communication has been received from the customer. Securities in this class must have been received in this state or be held in this state or belong to a customer whose last known address is in this state. This class also includes any stock dividends received on such securities. These dividends are deemed abandoned when received.

Securities in this class are different from those in the fourth class in that they need not have been received by the broker or dealer (or nominee) as the holder of record and, therefore, need not represent a dividend or security distribution on an existing security position. Also, the security need not to have been held in this state if it was received in this state or is due a customer with a last known address in this state.

If there has been no written contact with the customer for a period of three years, whether or not statements and other written communications have been sent to the customer or such communications have been returned undelivered by the post office, the account is considered dormant and securities due to the customer are deemed abandoned.

These securities are to be reported in the Schedule C of the abandoned property report. (Sec. 511. Subd. 4)

6. The sixth class of abandoned property consists of any unpaid wages payable on or after July first, nineteen hundred sixty-six due to a person, known or unknown, where for three successive years (a) such wages have remained unpaid, (b) no written communication has been received from such person and (c) notice regarding such wages sent via first class mail to such person at his last known address has been returned by the postal authorities for inability to locate such person. Care should be taken to include in unclaimed wages all checks issued for services rendered, under contract or otherwise, e.g. sales commissions, which have remained uncashed and outstanding for the three year period preceding abandonment.

The sending of first class notice referred to in subparagraph 6. (c), above, while desirable, is not a mandatory requirement under this provision nor does an election by the broker or dealer not to send such notice serve to exclude wages unpaid for three years from being deemed abandoned property. (Sec. 511, Subd. 5)

With further respect to balances due customers, only those items due a customer who entered into a broker and customer relationship in this state are subject to the statute. An isolated transaction wherein an office in this state received items for the account of a customer who entered into the broker-customer relationship in another state is not within the purview of this article. When an account with a customer is maintained on the books of a broker or dealer at an office in this state, it shall be presumed that such customer entered into a contract in this state with such broker or dealer, unless it be established by evidence that the contract giving rise to the relationship was made outside of this state. Moreover, items received as the holder of record of a security which a broker or dealer ceased to actually hold prior to receipt of the item, are deemed abandoned property (if unpaid to the entitled customer for three years) if received in this state, without regard to the location of the office in which the original transaction in respect to the security may have occurred. (Sec. 510, Subd. 6, par. b and Sec. 511, Subd. 1)

* * *

No. ——— Original

In The

Supreme Court of the United States

October Term, 1987

STATE OF DELAWARE,

Plaintiff,

v.

STATE OF NEW YORK

Defendant.

PROOF OF SERVICE

I, RICHARD L. SUTTON, certify that I am counsel of record for plaintiff, the State of Delaware, that I am a member of the Bar of the Supreme Court of the United States, and that on the 9th day of February, 1988, I served copies of the foregoing Motion for Leave to File Complaint, Complaint, and Brief in Support of Motion for Leave to File Complaint, on all parties required to be served by depositing such copies, first class postage prepaid, in a United States Post Office, addressed as follows:

The Honorable Mario M. Cuomo
Governor of the State of New York
New York State Capitol
Eagle & Washington Avenues
Albany, NY 12224

The Honorable Robert Abrams
Attorney General of the
State of New York
120 Broadway, 25th Floor
New York, NY 10271

I further certify that copies of said Motion, Complaint and Brief have been mailed to the remaining states, as stated in Paragraph 5 of said Complaint, by mailing copies by United States mail, first class postage prepaid, to the Attorneys General of each of such states.

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